1

TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1914.

No. 153

WILLIAM W. WHITE, APPELLANT,

vs.

THE UNITED STATES.

APPEAL FROM THE COURT OF CLAIMS.

FILED MAY 19, 1914.

(24,222)

(24,222)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1914.

No. 485.

WILLIAM W. WHITE, APPELLANT,

vs.

THE UNITED STATES.

APPEAL FROM THE COURT OF CLAIMS.

INDEX.

JUDD & DETWEILER (INC.), PRINTERS, WASHINGTON, D. C., OCTOBER 23, 1914.

1 *I. Petition. Filed December* 11, 1913.

In the Court of Claims.

No. 32725.

WILLIAM W. WHITE
v.
THE UNITED STATES.

Petition.

Filed December 11th, 1913.

The petition of the above-named William W. White respectfully represents:—

I.

That he is an officer in the United States Navy, being a Commander on the retired list, and that he has been continuously an officer in said Navy from the time of his graduation from the United States Naval Academy in June, 1881. That he was an officer on the active list of said Navy until the 30th day of June, 1905, on which date he was transferred to the retired list, on his own request, according to law, with the rank of three-fourths the sea pay of a
2 Commander, having been at the time of such transfer a Lieutenant Commander, but notwithstanding said transfer, but in accordance with law, he was continued, without intermission, in active service in said Navy until the 31st day of October, 1911, on which date he was detached from duty and ordered home.

II.

That by virtue of law in force from the said 30th day of June, 1905 until the said 31st day of October, 1911, he received for his active services in the Navy during that period the pay and allowance of a Lieutenant-Commander on the active list (Act of June 7, 1900, 31 Stat. L. p. 705).

III.

That on the 13th day of April, 1911, in pursuance of authority vested in the President of the United States by an Act of Congress approved March 4, 1911, he was commissioned by the then President of the United States "a Commander in the Navy on the Retired List from the 30th day of June, 1905, in the service of the United States."

IV.

That by a provision in the Act of Congress approved March 4, 1913 (Naval Appropriation Act) it was enacted—

"That all officers of the Navy who, since the 3rd day of March,

1899, have been advanced, or may hereafter be advanced in grade or rank pursuant to law shall be allowed the pay and allowances of the higher grade or rank from the dates stated in their commissions."

V.

That he is now entitled, by reason of said last mentioned enactment to receive from the defendant for his services during
3 the period beginning on the 30th day of June, 1905, and ending on the 31st day of October, 1911, in addition to the aggregate amount he has already received for such services, a sum equal to the difference between that aggregate amount and the aggregate pay and allowances of a Commander in the Navy for that period, that is to say, for the

difference between the pay of a Lieutenant-Commander in the Navy and that of a Commander from July 1st, 1905, to June 29, 1906, (both dates inclusive) at the rate of $425 per annum	$423.84
difference from June 30, 1906, to October 31, 1911, (both dates inclusive) at the rate of $500 per annum.	$2,688.03
difference in commutation for quarters from July 1, 1905, to October 31, 1911, (one extra room) at $12 per month	912.00
Amounting to	$4,003.87

VI.

That a claim was presented to the Auditor for the Navy Department and disallowed, for the reason that the Act of March 4, 1913, granting pay to officers from the dates as stated in their commissions, has reference only to officers advanced on the active list of the Navy.

VII.

That no assignment or transfer of this claim or any part thereof or interest therein has been made, and that he is the sole owner thereof; that he is justly entitled to the amount herein claimed from the United States after allowing all just credits and off-sets. That he has always been loyal to the Government of the United States and is a citizen thereof.

4 Wherefore the premises considered, your petitioner prays judgment against the United States for the sum of $4,003.87.

WILLIAM W. WHITE.

DISTRICT OF COLUMBIA,
City of Washington, ss:

William W. White, being first duly sworn, upon his oath says that he is the claimant in the above Petition, and that the allega-

tions set forth therein are true to the best of his knowledge and belief.

WILLIAM W. WHITE.

LYON & LYON,
Attorneys of Record.
E. S. McCALMONT,
Of Counsel.

Subscribed and sworn to before me, a Notary Public, this 11th day of December, A. D. 1913.

[SEAL.] GEORGE W. SMITH,
Notary Public.

5 *II. Traverse. Filed December* 12, 1913.

In the Court of Claims of the United States, December Term, A. D. 1913-1914.

No. 32725.

WILLIAM W. WHITE
vs.
THE UNITED STATES.

And now comes the Attorney General, on behalf of the United States, and answering the petition of the claimant herein, denies each and every allegation therein contained; and asks judgment that the petition be dismissed.

HUSTON THOMPSON,
Assistant Attorney General.
J. R. W.

6 *III. Demurrer. Filed March* 28, 1914.

The defendants, by their Attorney General, demur to the petition in the above entitled cause, on the ground that it does not state facts sufficient to constitute a cause of action.

HUSTON THOMPSON,
Assistant Attorney General.

LOUIS G. BISSELL,
Attorney for the United States.

7 *IV. Argument and Submission of Demurrer.*

On April 27, 1914 the demurrer in this case came on to be heard, and it was submitted by Mr. Louis G. Bissell, for the demurrer, and by Messrs. Lyon & Lyon, in opposition, on the argument in the case of John D. Ford, No. 32,687, a case involving the same question.

8 *V. Judgment of the Court.*

At a Court of Claims held in the City of Washington on the 4th day of May, 1914, judgment was ordered to be entered as follows:

The Court on due consideration of the premises find for the defendant, and do order, adjudge and decree, that the demurrer of the defendant be sustained, and that the petition of the claimant, William W. White, be, and the same is hereby dismissed.

BY THE COURT.

9 *VI. Application of Claimant for, and the Allowance of, an Appeal.*

Now comes the claimant in the above entitled cause, by Lyon & Lyon, his attorneys of record, and shows that the amount in controversy exceeds three thousand dollars, said amount being four thousand three dollars and eighty-seven cents.

And the claimant prays that this Court allow an appeal to the Supreme Court of the United States from the judgment rendered herein May 4, 1914, sustaining a demurrer and dismissing the suit.

LYON & LYON,
Attorneys of Record.

Filed May 11, 1914.

Ordered: That the above appeal be allowed as prayed for.

BY THE COURT.

May 11, 1914.

10 Court of Claims.

No. 32725.

WILLIAM W. WHITE
vs.
THE UNITED STATES.

I, John Randolph, Assistant Clerk Court of Claims, certify that the foregoing are true transcripts of the pleadings in the above-entitled cause; of the judgment of the Court sustaining the demurrer of the defendant and dismissing the petition of claimant; of the application of the claimant for, and the allowance of, an appeal to the Supreme Court of the United States.

In testimony whereof I have hereunto set my hand and affixed the seal of said Court of Claims at Washington City, this 16" day of May, A. D., 1914.

[Seal Court of Claims.]

JOHN RANDOLPH,
Assistant Clerk Court of Claims.

Endorsed on cover: File No. 24,222. Court of Claims. Term No. 485. William W. White, appellant, vs. The United States. Filed May 19, 1914. File No. 24,222.

IN THE

Supreme Court of the United States

OCTOBER TERM, 1915.

No. 153.

WILLIAM W. WHITE, Appellant,

vs.

THE UNITED STATES, Appellee.

APPEAL FROM THE COURT OF CLAIMS.

BRIEF FOR THE APPELLANT, WILLIAM W. WHITE.

EDWARD S. McCALMONT,
SIMON LYON,
R. B. H. LYON,
Attorneys for Appellant.

PRESS OF BYRON S. ADAMS, WASHINGTON, D. C.

INDEX.

CASES CITED.

STATUTES CITED.

IN THE

Supreme Court of the United States

OCTOBER TERM, 1915.

No. 153.

WILLIAM W. WHITE, Appellant,

vs.

THE UNITED STATES, Appellee.

APPEAL FROM THE COURT OF CLAIMS.

BRIEF FOR THE APPELLANT, WILLIAM W. WHITE.

STATEMENT OF THE CASE.

The appellant is an officer in the United States Navy, on the retired list. On June 30, 1905, he was a Lieutenant Commander on the active list, and on that day was transferred to the retired list (his age being at that time 49

years), and advanced in rank by such transfer to that of a Commander, under Section 8, of the Act of Congress approved March 3, 1899 (30 Stat. L., 1006).

On the same day, he was ordered to active shore duty, under authority vested in the Secretary of the Navy by the Act of Congress approved June 7, 1900 (31 Stat. L. 703), which reads as follows:

> "During a period of twelve years from the passage of this act any naval officer on the retired list may, in the discretion of the Secretary of the Navy, be ordered to such duty as he may be able to perform at sea or on shore, and while so employed shall receive the pay and allowances of an officer of the active list of the grade from which he was retired."

The active duty to which appellant was ordered was a continuation without break of duty in which he was engaged when retired. He was continued without intermission on shore duty for six years and four months, until October 31, 1911, when he was detached from duty, and was ordered home. During that time he received the pay and allowances of a Lieutenant-Commander.

On March 4, 1911, the following Act of Congress was passed:

> "That commissioned officers of the Army, Navy, and Marine Corps on the retired list whose rank has been or shall hereafter be advanced by operation of or in accordance with law shall be entitled to and shall receive commissions in accordance with such advanced rank." (36 Stat. L., 1354.)

On April 13, 1911, the appellant was commissioned a Commander in the Navy on the retired list, from the 30th day of June, 1905, in the service of the United States.

On March 4, 1913, the following Act of Congress was passed:

> "That all officers of the Navy who, since the third day of March, eighteen hundred and ninety-nine, have been advanced or may hereafter be advanced in grade or rank pursuant to law shall be allowed the pay and allowances of the higher grade or rank from the dates stated in their commissions." (37 Stat. L., 891.)

The appellant applied for the allowance of the pay and allowances of a Commander on shore duty from June 30, 1905, to October 31, 1911, less the pay and alowances of a Lieutenant-Commander on shore duty for that time, which latter amount he received. His claim was rejected by the Accounting Officers of the Treasury, whereupon he began suit for the amount claimed, and this is an appeal from the judgment dismissing on demurrer his petition, which stated the facts substantially as above recited.

Assignment of Errors.

The appellant hereby assigns the following errors in the proceedings and judgment of the Court of Claims:

1st. The Court erred in finding for the appellee, and in sustaining the demurrer.

2nd. The said Court erred in not finding that the appellant had a valid claim under the Act of Congress approved March 4, 1913, (37 Stat. L. 891), for the difference between the active pay and allowances of a Commander and those of a Lieutenant-Commander in the United States Navy for the period from June 30, 1905, to October 31, 1911.

3rd. The said Court erred in dismissing the petition of appellant.

ARGUMENT.

Appellant's Contention.

The appellant's position is that he is clearly, by the letter of the law, included in the general description "All officers of the Navy" as used in the Act of Congress approved March 4, 1913, hereinbefore cited. He was an officer who had been advanced in rank, pursuant to law, since the third day of March, 1899, that is to say, on June 30, 1905, and having been in active service *in invitum* from that date until October 31, 1911, and having received during that time only "the pay and allowances" of a Lieutenant-Commander, he became entitled by the terms of the aforesaid Act to the difference between the pay and allowances he had received, and the pay and allowances of a Commander—the grade to which he had been advanced.

The objection of the Government was that if appellant's contention is correct, then all officers of the Navy on the retired list, advanced since March 3, 1899, are entitled to the pay and allowances of their advanced grade. Officers on the retired list as such, do not receive pay *and allowances*. Pay *and allowances* invariably appertain to active service, and active service whether the officer is on the active or retired list.

"Shall be allowed the pay and allowances of the higher grade or rank from the dates stated in their commission," clearly includes all officers in *active* service, and *only* officers in active service. The Government in its argument below failed to distinguish between the terms "active *list*" and "active *service*." All officers on the active list are in active service, but so also are all officers on the retired list who are receiving pay and allowances, and they do not receive pay *and allowances* unless in active service.

The appellant's petition is, further, that he and officers on the retired list similarly situated, are not only within

the letter of the law, but that there is nothing in the nature or character of their claims to suggest that adherence to the letter of the law, as they read it, would result in unreasonable and much less absurd consequences.

On the other hand, appellant contends that his and their standing was such when the Act of Congress approved March 4, 1913, aforesaid was passed, as to invite and justify action by Congress in their interest, as officers discriminated against to their injury by the operation of the Act of Congress approved June 7, 1900 (31 Stat. L. 703).

The appellant went on the retired list June 30, 1905. He was, however, kept in active service, without increase of pay and allowances, continuously for a period of six years and four months. In the meantime, what happened? An inspection of the Naval Register, covering the year of 1905 and following years, discloses that officer Emil Theiss took the number in the active list vacated by the appellant; that Theiss became a Commander August 28, 1907, and a Captain March 4, 1911. A calculation reveals that had the appellant continued on the active list and been regularly advanced, he would have received for his services from July 1, 1905, to October 31, 1911, in addition to what he did receive as a retired officer on active duty, the sum of $2,957.00. In other words, this appellant apparently suffered a money injury to the extent of about three thousand dollars, and in addition, he was left in rank, a grade below his contemporaries, and in pay, two grades below that which he would be receiving were he on the retired list of the date when his active duties ceased, October 31, 1911.

The word "apparently" above, is used to meet the criticism that the appellant might not have met the requirements for promotion. As he was retained in active service, the presumption would seem to be the other way. However, we are not attempting to show the result definitely, but only

to the extent of fixing conditions as of the time when the Act of Congress approved March 4, 1913, was passed.

We ask indulgence for endeavoring to throw a little more light on the conditions following and flowing from the operation of the Act of Congress approved June 7, 1900, hereinbefore cited.

Section 8 of the Personnel Act was an invitation to Lieutenant-Commanders, Commanders and Captains to offer themselves for retirement in order that there might be a chance for a freer upward movement from congested lower grades. It stands to reason that an officer would not offer himself for retirement without a motive, and it is too altruistic to suppose that the motive would be other than one of material betterment. It is quite clear that when the Act of Congress approved March 3, 1899, aforesaid, was passed, there was no prospective intention on the part of Congress of changing the historical policy that required the service of retired officers only in time of war.

When the Act of Congress approved June 7, 1900, was passed, the Act of March 3, 1899, was untouched so far as its voluntary retirement provisions were concerned, and it must be presumed that the intention was to continue the invitation to voluntary retirement as provided therein. The invitation, however, would necessarily prove barren of acceptance if the invited were to believe in advance that acceptance would mean their continuance in active service with stationary compensation and no further advancement in grade beyond the advancement to a higher grade on the retired list. If Congress intended that the discretionary power it was vesting in the Secretary of the Navy by the aforesaid Act of June 7, 1900, would be used to continue the officers going on the retired list under the Act of March 3, 1899, on active duty indefinitely, it is reasonable to suppose that it would have repealed the voluntary retirement pro-

vision of the Act of March 3, 1899, as otherwise we must assume that Congress had design in advance of leaving open an invitation, acceptance of which would be based on a confidence that would be sure of a disappointment. It may be affirmed then that Congress did not anticipate that the Secretary of the Navy would use the discretionary power vested in him by the Act of June 7, 1900, aforesaid, to the injury of officers retiring voluntarily, or rather that he would not use it in a manner to impair the confidence they would necessarily be presumed to entertain in submitting themselves for retirement. The Secretary, on the other hand, naturally inferred that the power was to be exercised, and that it was his duty to exercise it, wholly in the interest of the Government without regard to its effect upon the careers of the officers concerned. If the exercise of the discretion did in fact seriously and injuriously affect the officers concerned, and we think that can not be doubted, then, looking backward, which must be done in consideration a statute having for its purpose the giving of additional pay for past services, we find Congress in 1913 confronting a situation which appealed fairly to a sense of justice for relief, and this being the case, we find Congress passing a law, which in plain terms, appears to intend to give the relief the conditions demanded. In this situation we submit that the spirit and intention of the aforesaid Act of Congress approved March 4, 1913, is crystalized in its language, and should be enforced as written, in favor of *all* officers of the Navy coming within its terms.

Supporting the foregoing contention of appellant, are the following authorities:

> "It is a well-settled rule that so long as the language used is unambiguous, a departure from the natural meaning is not justified by any consideration of its

consequence, or public policy, and it is the plain duty of the Court to give it force and effect."

Lake County Commissioners v. Rollins (130 U. S., 662);
United States v. Goldenberg (168 U. S. 95);
Johnson v. Southern Pacific Co. (196 U. S. 15).

* * * * * * * * *

"* * * it is fairly and justly presumable that the legislature which was unrestrained in its authority over the subject, has so shaped the law as without ambiguity or doubt, to bring within it everything that was meant should be embraced."

Cooley on Taxation 3d Edition, p. 464.

"The statute must be held to mean what its language imports; when it is clear and imperative, reasoning *ab inconvenienti* is of no avail, and there is no room for construction."

Boudinet v. U. S. (11 Wall., 616);
Lewis v. United States (92 U. S., p. 621);
Lake County Commissioners v. Rollins (130 U. S., 662).

"Construction and interpretation have no function where the terms of the Statute are plain and certain, and its meaning clear."

Colorado & N. W. R. R. Co. v. United States (209 U. S., 544).

* * * * * * * * *

"The statute is a remedial one and should be liberally interpreted."

Silver v. Ladd (7 Wall., 219);
Johnson v. So. Pacific Co. (196 U. S., 15);
Merchants National Bank of Baltimore v. United States (42 C. C., 6);
1 Kent Comm. 465.

"In expounding remedial laws, the Courts will extend the remedy as far as the words will admit."

Hayden's Case (3 Coke 7);
Pierce v. Hopper (1 Strange 253).

"A remedial statute ought not to be construed so as to defeat in part the very purpose of its enactment."

Beley v. Naphtaly (169 U. S., 353);
Jones v. Guaranty, etc., Co. (101 U. S., 626);
Twenty Per Cent Cases (13 Wall., 575);
Ross v. Doe (1 Pet., 667).

We call the Court's special attention to the cases of United States v. Hvoslef (237 U. S., p. 1) and Thames-Mersey Marine Insurance Co., Ltd., v. United States (237 U. S., p. 19), in which it decided the following:

"Although the pendency of one class of claims may have induced the passage of an Act of Congress providing for their adjustment, the Act may embrace other claims if its terms are sufficiently wide so to do."

* * * * * * * * *

Reply to Appellee's Contention.

In its brief below, the Government presented in different forms, a line of reasoning, having in view a refutation of our proposition that by the language of the Act of Congress approved March 4, 1913, aforesaid, the appellant and others similarly situated (that is to say retired officers who were

cast *in invitum* for active service under the aforesaid Act of June 7, 1900) are included among the officers of the Navy it designed to aid. Anticipating a reiteration of the reasoning, we submit that it is so unconvincing as to warrant the supposition that it has no other purpose than that of *creating* an ambiguity in the language of the aforesaid Act of March 4, 1913, in order that the records of Congress may be invoked and a limitation of the general language of this Act imposed to fit the limited purposes disclosed by such records—to substitute the limited purpose of a portion of the legislative body for the general purposes expressed by the whole body. (See 19 Comp. Dec., 844.)

Assuming that there is no ambiguity in the language of the aforesaid Act of March 4, 1913, and that its purpose as disclosed by that language alone sustains the contention of the appellant, can the Court, as the rules of interpretation stand, give a limited meaning to the language on finding a limited purpose attached to it in the report of a Committee of one of the branches of the Legislature?

> "Where a law is plain and unambiguous, whether expressed in general or limited terms, there is no room left for construction, and a resort to extrinsic facts is not permitted to ascertain its meaning."
>
> Bartlett v. Morris (9 Porter, 266);
> United States v. Musgrove (160 Fed. Rep. 700);
> Lake County Commissioners v. Rollins (131 U. S., 671).

But it is said that this is no longer a rule of construction, and the cases of the Church of the Holy Trinity v. The United States (143 U. S., 463) and Binns v. United States (194 U. S. 486) are cited in support of the statement. We submit to the Court that neither of these cases infringes the rule. Mr. Justice Blackstone in his Commentaries (Intro-

duction, Sec. 2, p. 60) having under discussion the method of interpreting the will of the legislator, says that where words have no meaning or bear an absurd signification if literally understood, we must deviate from the received sense of them, that is, we must attend to the effects and consequences, and if the effects and consequences appear absurd, the literal scope of the language is to be limited. He illustrates the rule by a case mentioned by Puffendorf under the Bolognian Law which enacted "that whoever drew blood in the streets should be punished with the utmost severity," in which it was held "after long debate" that it did not extend to a surgeon who opened the vein of a person that fell down in the street with a fit.

Rightly considered, the Holy Trinity Church case ranges itself with the case mentioned by Puffendorf. It is plain from the opinion in the Church case that although the conclusion is the result of "long debate" yet that the consequence of a literal interpretation of the Act in that case under discussion, as invoked by the Government, must have appeared to the Court as plainly and obviously contrary to the attitude of the common mind of the nation. The resort to the Committee records was, therefore, to determine whether the Court's conception of the common thought and attitude of the nation found any conflicting conception among those who had considered the subject preliminary to the enactment of the Statute.

Nor did the Court go to the records of either branch of Congress for an interpretation of the Act under review in the Binns case. The only question in that case that involved interpretation was whether a provision in the Penal Code of Alaska, which required that license fees to be collected in Alaska thereunder should be paid into the Treasury of the United States, was void as in conflict with the provision of the Constitution withholding from Congress the power to

impose excise taxes except uniformly throughout the United States. The question, as appears by the opinion, received a negative answer, because the taxes were not imposed or used for the expense of the general government, upon reasoning not dependent in any way upon anything that occurred in either branch of Congress or before its Committees in connection with the consideration of the legislation.

In the opinion of Justice Brewer in the foregoing case, reference was made to a response on the floor of the Senate by the Chairman of the Committee on Territories, as tending to show that the license charges were being imposed solely for the purpose of revenue to help defray Alaskan expenses, but only *after* he had already expressed the opinion of the Court drawn from other considerations, that it was obvious that the purpose of the taxes was to raise revenue in Alaska for Alaska because the taxes were authorized in statutes dealing solely with Alaska and there was no provision for a direct property tax to be collected in Alaska for the general expenses of the Alaskan Government, and because the entire moneys collected from the license taxes and otherwise from Alaska were inadequate for the expenses of that Territory.

A further contention of the Government was that the appellant's position requires, if deemed sound, repeal by implication of an Act of Congress passed August 22, 1912 (37 Stat. L., 328) which reads:

> "Hereafter any naval officer on the retired list may, with his consent, in the discretion of the Secretary of the Navy, be ordered to such duty as he may be able to perform at sea or on shore, and while so employed in time of peace shall receive the pay and allowances of an officer of the active list of the same rank: *Provided*, That no such retired officer so employed on active duty shall receive, in time of peace, any greater pay and al-

lowances than the pay and allowances which are now or may hereafter be provided by law for a lieutenant, senior grade, on the active list of like length of service: *And provided further*, That any such officer whose retired pay exceeds the highest pay and allowances of the grade of lieutenant, senior grade, shall, while so employed in time of peace, receive his retired pay only, in lieu of all other pay and allowances."

The appellant's active service while on the retired list had no connection whatever with the Act of August 22, 1912. The policy of that Act, be it observed, is in harmony with the position of the appellant that he and those in a like situation, were discriminated against by the operation of the Act of June 7, 1900, for, the said Act of June 7, 1900, having expired by limitation, the Act of August 22, 1912, reversed its exceptional, temporary, experimental policy, first, by making service optional and not re-enacting compulsory service, and, secondly, by providing, to a large extent, that pay and allowances for active services should be of the grade of the retired officer.

Were this appellant applying for pay and allowances of his grade by reason of active services under the Act of August 22, 1912, and recognition of his claim would involve a repeal by inplication, of the Act of August 22, 1912, *pro tanta*, we could concede the force of the Government's argument. To hold that the appellant and those in a similar situation under the operation of the Act of June 7, 1900, hereinbefore cited, are within the benefit of the Act of March 4, 1913, hereinbefore cited, does not preclude the Government from contending if a case under the aforesaid Act of August 22, 1912, should arise, that it is not within the benefit of the Act of March 4, 1913, hereinbefore cited. The Act of March 4, 1913, can be carried out in every part as including appellant within the scope of its general provi-

sions, and as excluding, if the occasion should arise, retired officers performing active service under the operation of the provisions of the Act of Congress approved August 22, 1912. As to these latter, the contention that the Act of March 4, 1913, can not be deemed to repeal by implication, the Act of August 22, 1912, would be sound. As to appellant, and those in a similar situation, it is not sound, for the Act of August 22, 1912, is in no way involved in their contention. The correctness of the appellants' contention as to the Act of March 4, 1913, does not by implication repeal the Act of August 22, 1912, or any part of it. It would continue to be the law as to pay and allowances for all active service on the part of retired officers under its operative provisions.

It must, therefore, be concluded that the Act of March 4, 1913, construed according to its plain terms and words, which would be in accordance with the well settled principles of law as heretofore decided by this Court, would give this appellant the difference in pay and allowances between that of a Lieutenant-Commander and Commander for the period from June 30, 1905, to October 31, 1911, which is justified by the plain reading of the language of the aforesaid Statute bearing on this case, as the Act of March 4, 1913, reads:

> "That all officers of the Navy who, since the third day of March, eighteen hundred and ninety-nine, have been advanced or may hereafter be advanced in grade or rank pursuant to law shall be allowed the pay and allowances of the higher grade or rank from the dates stated in their commissions."

The appellant, therefore, prays that the judgment of the Court of Claims, sustaining the demurrer and dismissing the petition, be reversed, so as to entitle this appellant to the aforesaid difference of pay for the active service ren-

dered by him covering the period from June 30, 1905, to October 31, 1911, and that the case be remanded with instructions to enter judgment for the appellant after ascertainment by the Treasury Department of the exact amount due for such services.

Respectfully submitted,

EDWARD S. MCCALMONT,
SIMON LYON,
R. B. H. LYON,
Attorneys for Appellant.

APPENDIX.

(Acts of Congress Cited by Appellant.)

Act of Congress approved March 3, 1899, Section 8 (30 Stat. L., 1006):

> "Section 8. That officers of the line in the grades of captain, commander, and lieutenant-commander may, by official application to the Secretary of the Navy, have their names placed on a list which shall be known as the list of 'Applicants for voluntary retirement,' and when at the end of any fiscal year the average vacancies for the fiscal years subsequent to the passage of this Act above the grade of commander have been less than thirteen, above the grade of lieutenant-commander less than twenty, above the grade of lieutenant less than twenty-nine, and above the grade of lieutenant (junior grade) less than forty, the President may, in the order of the applicants, place a sufficient number on the retired list with the rank and three-fourths the sea pay of the next higher grade, as now existing, including the grade of commodore, to cause the aforesaid vacancies for the fiscal year then being considered."

Act of Congress approved June 7, 1900 (31 Stat. L., 703):

> "During a period of twelve years from the passage of this act any naval officer on the retired list may, in the discretion of the Secretary of the Navy, be ordered to such duty as he may be able to perform at sea or on shore, and while so employed shall receive the pay and allowances of an officer of the active list of the grade from which he was retired."

Act of Congress approved March 4, 1911 (36 Stat. L., 1354):

"That commissioned officers of the Army, Navy, and Marine Corps on the retired list whose rank has been or shall hereafter be advanced by operation of or in accordance with law shall be entitled to and shall receive commissions in accordance with such advanced rank."

Act of Congress approved August 22, 1912, (37 Stat., 328, 329):

"Hereafter any naval officer on the retired list may, with his consent, in the discretion of the Secretary of the Navy, be ordered to such duty as he may be able to perform at sea or on shore, and while so employed in time of peace shall receive the pay and allowances of an officer of the active list of the same rank: *Provided*, That no such retired officer so employed on active duty shall receive, in time of peace, any greater pay and allowances than the pay and allowances which are now or may hereafter be provided by law for a lieutenant, senior grade, on the active list of like length of service: *And provided further*, That any such officer whose retired pay exceeds the highest pay and allowances of the grade of Lieutenant, senior grade, shall, while so employed in time of peace, receive his retired pay only, in lieu of all other pay and allowances."

Act of Congress approved March 4, 1913, (37 Stat. L., 891):

"That all officers of the Navy who, since the third day of March, eighteen hundred and ninety-nine, have been advanced or may hereafter be advanced in grade or rank pursuant to law, shall be allowed the pay and allowances of the higher grade or rank from the dates stated in their commissions."

In the Supreme Court of the United States.

OCTOBER TERM, 1915.

WILLIAM W. WHITE, APPELLANT,
v.
THE UNITED STATES, APPELLEE. } No. 153.

APPEAL FROM THE COURT OF CLAIMS.

BRIEF FOR THE UNITED STATES.

STATEMENT.

The petition herein was dismissed by the Court of Claims on the Government's demurrer thereto. This is a class case.

Appellant graduated from the Naval Academy in 1888. On the 30th day of June, 1905, at which time he was a lieutenant commander, appellant was transferred to the retired list with the rank and three-fourths the sea pay of a commander. This transfer was at the request of appellant, and in accordance with law. Simultaneously with his retirement he was detailed to active service until the 31st day of October, 1911, when he was ordered home. From the 30th day of June, 1905, until the 31st day of

October, 1911, he received the pay and allowance of a lieutenant commander on the active list.

Appellant's position is that as he was retired as a commander he became, by virtue of the act of March 4, 1913 (37 Stat. L. 891), upon being detailed to active service, entitled to the same pay and allowances as a commander, and he therefore claims the difference between a commander's pay and the pay and allowances of a lieutenant commander from June 30, 1905, to October 31, 1911.

The Government maintains that the act of March 4, 1913, does not comprehend the status of officers on the retired list who may be detailed to active service subsequent to their retirement; that their status is controlled solely by the acts of June 7, 1900 (31 Stat. 703) and August 22, 1912 (37 Stat. 328, 329).

BRIEF OF ARGUMENT.

Officers on the retired list are not included within the terms of the act of March 4, 1913, because:

First. The act of March 4, 1913, refers only to officers in the active service regularly advanced in grade, and does not contemplate officers on the retired list specially detailed to active duty.

Second. Appellant's status is determined solely by the act of June 7, 1900.

ARGUMENT.

The single question presented is whether the act of March 4, 1913, grants to officers promoted upon retirement the full pay and allowances of their pro-

motion grades when subsequently detailed to active duty.

The statutes involved in the consideration of this question are as follows:

Act of June 7, 1900 (31 Stat. 703):

> During a period of twelve years from the passage of this act any naval officer on the retired list may, in the discretion of the Secretary of the Navy, be ordered to such duty as he may be able to perform at sea or on shore, and while so employed *shall receive the pay and allowances of an officer of the active list of the grade from which he was retired.* [Italics ours.]

Act of August 22, 1912 (37 Stat. 328, 329):

> Hereafter any naval officer on the retired list may, with his consent, in the discretion of the Secretary of the Navy, be ordered to such duty as he may be able to perform at sea or on shore, and while so employed in time of peace shall receive the pay and allowances of an officer of the active list of the same rank: *Provided*, That no such retired officer so employed on active duty shall receive, in time of peace, any greater pay and allowances than the pay and allowances which are now or may hereafter be provided by law for a lieutenant, senior grade, on the active list of like length of service: *And provided further*, That any such officer whose retired pay exceeds the highest pay and allowances of the grade of lieutenant, senior grade, shall, while so employed in time of peace, receive

his retired pay only, in lieu of all other pay and allowances.

Act of March 4, 1911 (36 Stat. L. 1354):

> That commissioned officers of the Army, Navy, and Marine Corps on the retired list whose rank has been or shall hereafter be advanced by operation of or in accordance with law shall be entitled to and shall receive commissions in accordance with such advanced rank.

Act of March 4, 1913 (37 Stat. L. 891, 892):

> That all officers of the Navy who, since the third day of March, eighteen hundred and ninety-nine, have been advanced or may hereafter be *advanced in grade or rank* pursuant to law shall be allowed *the pay and allowances* of the higher grade or rank from the dates stated *in their commissions.* [Italics ours.]

FIRST.

The act of March 4, 1913, refers only to those regularly advanced in grade and not to those specially detailed to active duty after retirement.

The Government maintains that if it shall appear that the act of March 4, 1913, does not refer to retired officers subsequently detailed to active duty, then appellant's status is determined by the act of June 7, 1900, which would not give him the pay and allowances of the grade to which he was promoted on retirement during the special detail to active service. In order to become a beneficiary under the act of 1913 an officer's status must meet three conditions: (1) He must be advanced in grade; (2) his

advance must grant him not only pay, but also "*allowances,*" and (3) his advance must be evidenced by a commission. In the usual course appellant was simultaneously promoted and retired. After his retirement he was detailed to active duty. The detail followed immediately after his retirement, but it was a separate and distinct thing. Nowhere can it be found that the detail to active duty following retirement constitutes an advance in grade or rank. If it did constitute an advance in grade or rank, then the line of demarcation between that of an officer in the active service and one on the retired list would be wiped out by this act of March 4, 1913.

It is incomprehensible that Congress would intend to annihilate this line of demarcation after all the years of emphasis upon it.

This would be so revolutionary as to permit all officers on the retired list since 1889, who have been advanced, to receive allowances, whether detailed to active service after retirement or not. It would also affect all officers now in the active service upon their retirement, by giving them allowances when retired, whether assigned to active duty or not.

The desire of Congress to indicate that this act was not intended to include officers on the retired list is further demonstrated by the fact that it allows "pay and allowances" to all officers coming within its purview. Whereas only officers on the active list receive allowances. Officers on the retired list receive pay only, except when detailed to active duty. Hence the obvious intention in the act of 1913

was to include only those actively in the service and not those specially detailed from retirement to active service.

The third indication of the intention to include only officers in the active service and not those specially detailed from retirement is that this act allows the pay and allowances of the higher grade or rank to start from the dates stated in the "*commissions*" of the officers. The detail of an officer does not call for a commission. It is true that a commission is now given to officers in retirement who were promoted to a higher grade before their retirement under the act of March 4, 1911, as follows:

> That commissioned officers of the Army, Navy, and Marine Corps on the retired list whose rank has been or shall hereafter be advanced by operation of or in accordance with law shall be entitled to and shall receive commissions in accordance with such advanced rank. (36 Stat. L. 1354.)

This act was undoubtedly passed to comply with the sentimental desires of officers on the retired list who had served during the Civil War and had been advanced to rank and pay upon retirement, but had received no commissions as evidence of their advancement. Attorney General Moody (Attorney General's Op. Vol. XXV, p. 185) had rendered an opinion that although these officers had been advanced on the rolls and received the pay of the higher rank, that nevertheless they were not entitled to commissions. (Wood *v.* United States, 107 U. S.

414.) Thereupon the above act was passed to supply this omission.

It is obvious that a detail to active service after the retirement is purely an order from the Secretary of the Navy, and no commission issues. This alone would seem to foreclose appellant's contention that he is included within the act of March 4, 1913, as he received no commission for his detail to active service.

The act of 1913 deals specifically with the grades of naval officers advanced in grade and the commencement of the higher pay of the grade attained by advancement, and not at all with rates of pay or with the duties of naval officers, not even ordinary duty, and much less with extraordinary or special duty.

If further elucidation be necessary, reference is made to the interpretation of this act as placed upon it by Congress.

An examination of the reports of the Naval Committees of the House and Senate of the Sixty-second Congress will show that it was the indisputable purpose and intent of those committees to limit the provision of the act of March 4, 1913, to officers of the lowest grades in the Navy. The provision, which was finally enacted into law as a proviso to the naval appropriation bill approved March 4, 1913, had been added as an amendment to the appropriation bill the preceding year, in 1912, but was stricken out of the bill on a point of order as being general legislation. (See Senate Rept. No. 1217, 62d Cong., 3d sess.) Subsequently the provision was introduced in both

houses as a separate bill (S. 7278 and H. R. 25715, 62d Cong.) and favorably reported out of the Naval Committees of both houses. (House Rept. No. 1089, 62d Cong., 2d sess.; Senate Rept. No. 1217, 62d Cong., 3d sess.) These reports are practically identical, the Senate committee having incorporated the House report in its own report. On the strength of these reports the exact and identical language of the bill was incorporated by the Senate Naval Committee in the then pending naval appropriation bill, accepted by the House in conference, and enacted into law March 4, 1913.

The following language appears in both reports:

> The Committee on Naval Affairs, to whom was referred the bill (H. R. 25715) providing that the pay of officers of the Navy shall commence from the date they take rank, reports the same favorably, with a recommendation that the bill do pass.
>
> This bill was included in identically the same language by the House Committee on Naval Affairs in the naval appropriation bill of this session, but was stricken out in the House on a point of order as new legislation. It was reinserted in the naval appropriation bill by the Senate Committee on Naval Affairs upon the request of the Secretary of the Navy and again stricken out on a similar point of order when the appropriation bill was before the Senate.
>
> Under existing laws all officers in the Navy promoted in course to fill vacancies receive the pay of the advanced grade from the date

they take rank, as stated in their commissions, under the act of June 22, 1874 (18 Stat. L. 191), as follows:

"That on and after the passage of this act any officer of the Navy who may be promoted in course to fill a vacancy in the next higher grade shall be entitled to the pay of the grade to which promoted from the date he takes rank therein, if it be subsequent to the vacancy he is appointed to fill."

Consequently the only officers now in the Navy who do not receive the pay of their grade from the time they take rank as stated in their commissions are the youngest officers, who are appointed to the lowest grade and consequently not promoted in course to fill vacancies. These officers are assistant paymasters, assistant naval constructors, assistant civil engineers, ensigns, and chief warrant officers, as to all of whom the Comptroller of the Treasury has decided that they are not entitled to the pay of their grade until confirmed by the Senate.

* * * * *

Your committee believes that it is only equitable that these young officers should receive the pay of their grade from the time they begin to perform the duties of their office and from the time they take rank as evidenced by their commissions.

* * * * *

It will thus be seen that Congress intended to limit this provision to officers of the active list and in particular to those officers in the lowest grades who are directly appointed thereto and not "promoted in

course to fill vacancies in the next higher grades." In other words, the general purpose of the act of March 4, 1913, was to put all naval officers not on the retired list on the same footing relative to the commencement of the pay of the higher grade attained by promotion and to allow them that pay from the dates of their eligibility to promotion as evidenced by their commissions, instead of from the dates of their actual promotion.

The status of an officer upon the retired list who is subsequently detailed to active service must then be determined by the act of 1900 or of 1912.

SECOND.

Appellant's status is controlled by the act of June 7, 1900.

The acts of 1900 and 1912 deal specifically and exclusively with special and extraordinary duties to be performed by retired officers when required by the Secretary of the Navy, and with the pay of the officers detailed; they concern the grade or rank of such officers only indirectly, if at all. Any promotion which may accompany retirement under the act of 1900 or 1912 is wholly immaterial to the assignment to active duty, since assignment to active duty necessarily presupposes retirement as a completed act before said assignment may take place.

It is obvious from the language of the act of March 3, 1899 (30 Stat. 100, sec. 11) that promotion upon retirement is incidental to the retirement, as naval officers, in the language of the act, "shall,

when retired, be retired with rank * * * of the next higher grade." It is just as obvious that the subsequent assignment to active duty is not necessary in order to complete the promotion upon retirement because, as a matter of fact, the great majority of officers promoted and retired are never assigned thereafter to active duty.

If, then, the acts of 1900 and 1912, respectively, dealing with those who are retired and subsequently detailed to special duty in active service (in which case no commission is required) concern only those on the retired list, while the act of 1913 affects only those in the active service, then the acts of 1900 and 1912 deal with a separate subject, and do not conflict with the act of 1913. Furthermore, the act of 1913, being general legislation and not expressly repealing the acts of 1900 and 1912, does not repeal them impliedly, there being no irreconcilable conflict in the subjects considered.

As the act of 1900 was in force during the time for which this claim is made and as it dealt with retired officers subsequently assigned to active duty only, appellant's status is responsive to its terms.

CONCLUSION.

It is respectfully submitted that the judgment of the Court of Claims should be sustained.

HUSTON THOMPSON,
Assistant Attorney General.

RICHARD P. WHITELEY,
Assistant Attorney.

○

IN THE

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1915.

No. 153.

WILLIAM W. WHITE, APPELLANT,

vs.

THE UNITED STATES, APPELLEE.

REPLY BRIEF FOR APPELLANT.

EDWARD S. McCALMONT,
SIMON LYON,
R. B. H. LYON,
Attorneys for Appellant.

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1915.

No. 153.

WILLIAM W. WHITE, APPELLANT,

vs.

THE UNITED STATES, APPELLEE.

REPLY BRIEF FOR APPELLANT.

Counsel for the Government argues in his brief that the act of March 4, 1913, refers only to those regularly advanced in grade and rank and not to those specially detailed to active duty after retirement.

I.

In reply we beg to call the attention of the Court to the fact that there is nothing in the language contained in the act of Congress approved March 4, 1913, which discriminates against officers detailed to active duty after retirement.

It is an assumption on the part of counsel for the Government that finds no support in the language of the act nor in any legitimate deduction to be derived from comparing the language with previous legislation.

The appellant comes within the plain terms of the statute. A retired officer is an officer of the United States Navy, and therefore is embraced within the term "all officers of the Navy."

Appellant was advanced in rank, pursuant to law, since the third day of March, 1899, and received pay *and allowances* of the rank of Lieutenant-Commander, which he held before retirement (being on duty in the Bureau of Steam Engineering, Navy Department), but not of the rank of Commander, at which grade or rank he was retired.

It is insisted that the acts of Congress approved June 7, 1900, and March 4, 1913, clearly define appellant's rights in the matter.

Reference is made in the appellee's brief to the fact that this is a class case.

At the time of the passage of the act of June 7, 1900, when the Secretary of the Navy was given the discretionary power to assign an officer on the retired list to active duty, there were approximately eight hundred (800) officers on the retired list, as shown by the official naval registers, and from June 30, 1900, when the first detail was made of an officer on the retired list to active duty, to June 30, 1905, when the list of retired officers slightly increased in number and when the appellant was retired and immediately continued in active duty, there were fifteen (15) officers so detailed—that is to say, on an average of three a year—and of these fifteen officers so detailed but few of them were immediately transferred back to the active list—that is to say, without any intermission whatever.

The official naval registers will also show that from June 7, 1900, to June 7, 1912, when the act of June 7, 1900, expired by limitation—that is to say, during a period of twelve years—there were only about one hundred (100) officers who were transferred from the retired list to active service, so that the average number of officers who were detached from the retired list to active service averaged about

eight (8) a year during the existence of the act of June 7, 1900.

It will therefore be seen that the number of officers who are claiming the benefit of the act of March 4, 1913, are rather limited. The suggestion of the Government that this is a class case does not, however, enter into the merits of the issue.

II.

Counsel for the Government, on page 7 of its brief, suggests to this honorable court an examination of the reports of the Naval Committees of the House and Senate of the 62d Congress, to show that it was the purpose and intent of these committees to limit the provisions of the act of March 4, 1913, to officers of the lowest grades in the Navy, and quotes certain language from the report of the Committee on Naval Affairs to House Bill 25715 of the 62d Congress. This report cannot affect the decision here.

It is only in cases where the language of an act is obscure that such reports can be considered.

There is no question here of strict or liberal construction. Congress has passed a just act; the case is directly within its terms.

This report by the House Naval Committee appears to have been made during the 62d Congress, 2d session, while the Naval appropriation bill, in which is contained the provision under which appellant maintains his claim, was introduced and passed during a subsequent session of Congress.

If this report be regarded by this honorable court as material, then appellant begs to call the court's attention to the fact that there was at the same time pending in Congress other bills for the relief of retired officers of the Navy who had been detailed for active service, to wit, Senate Bill 6080 of the 62d Congress, 2d session, which reads as follows:

A BILL

For the Relief of Certain Retired Officers of the Navy and Marine Corps.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That any officer on the retired list of the Navy or Marine Corps who has been or may hereafter be employed on active duty for an aggregate period of three years shall be promoted to and receive the pay and allowances of the next higher rank from the date of this act.

SEC. 2. That the President be, and he is hereby, authorized to issue commissions, on the retired list, to officers promoted under this act, and any retired officer who has been or may hereafter be detached from active duty shall, after such detachment, have the rank and three-fourths the pay to which such duty may have entitled him under the provisions of this act: *Provided,* That nothing herein shall be so construed as to restore any retired officer to the active list or reduce the rank, pay, or allowances now authorized by law for any officer of the Navy or Marine Corps.

SEC. 3. That all acts and parts of acts inconsistent with this act are hereby repealed.

and House Bill 22587, 62d Congress, 2d session, which reads as follows:

A BILL

For the Relief of Certain Retired Officers of the Navy and Marine Corps.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That any officer on the retired list of the Navy or Marine Corps, who has been or may hereafter be employed on active duty for an aggregate period of three years, shall be promoted to and receive the pay and allowances of the next higher rank from the date of this act.

SEC. 2. That the President be, and he is hereby

authorized to issue commissions on the retired list to officers promoted under this act, and any retired officer who has been or may hereafter be detached from active duty shall, after such detachment, have the rank and three-fourths the pay to which such duty may have entitled him under the provisions of this act: *Provided*, That nothing herein shall be construed as to restore any retired officer to the active list or reduce the rank, pay, or allowances now authorized by law for any officer of the Navy or Marine Corps.

SEC. 3. That all acts and parts of acts inconsistent with this act are hereby repealed.

There was also pending Senate Bill 5955, 62d Congress, 2d session, which reads as follows:

A BILL

For the Relief of Certain Retired Officers of the Navy and Marine Corps.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That any officer of the Navy or Marine Corps retired in accordance with law, who has heretofore been or may hereafter be employed under orders on active duty shall, for the purposes of rank, pay, and allowances, be regarded as having been restored on the day such active duty actually began to the numerical position in the grade on the active list which was occupied by him at the date of his retirement and be credited with all service rendered by him while so employed on active duty after retirement, or in case of a second or subsequent assignment to active duty to the numerical position in the grade occupied at the time when last detached from active duty, in the same manner and to the same extent as though such service has been rendered on the active list: *Provided*, That for the purposes of rank, pay, and allowances under this section retired Engineer officers employed on active duty shall be regarded as having been restored to positions on the active list

occupied by officers of the line of the Navy having the same length of commissioned service and shall be credited with service rendered after retirement as herein provided, but this act shall not have the effect of transferring any retired Engineer officer to the line of the Navy: *And provided further*, That any retired officer heretofore or hereafter employed on active duty in accordance with this section shall be promoted without examination to such rank as the number next below the position to which he may be assigned under this section has heretofore been or may hereafter be promoted during such retired officer's employment on active duty.

SEC. 2. That the President be, and he is hereby, authorized to issue commissions on the retired list to officers promoted under the provisions of this act; and any retired officer who has heretofore been or may hereafter be detached from active duty shall, after such detachment, have the rank and three-fourths the pay to which such duty may have entitled him under the provisions of this act.

SEC. 3. That the provisions of this act shall not apply to any officer of the Navy or Marine Corps above the rank of lieutenant commander in the Navy or Major in the Marine Corps, respectively, nor shall any officer be advanced under this act above such rank: *Provided*, That nothing contained herein shall be construed so as to entitle any retired officer of the Navy or Marine Corps to increased rank, pay, or allowances, prior to the date of this act, nor shall any provision of this act entitle any retired officer to be restored to the active list of the Navy or Marine Corps: *And provided further*, That nothing herein shall operate to reduce the rank, pay, or allowances now authorized by law for any commissioned, warrant, or appointed officer on the retired list of the Navy or Marine Corps.

SEC. 4. That so much of the act approved August fifth, eighteen hundred and eighty-two, chapter three hundred and ninety-one, as is in conflict with the provisions of this act, and all other acts or parts of acts inconsistent herewith, be, and the same are hereby, repealed.

The above bill was favorably reported by the Senate Committee on Naval Affairs. See Senate Report No. 710, 62d Congress, 2d session, which reads as follows:

62d Congress, 2d Session. } CALENDAR No. 633. SENATE. { Report No. 710.

Certain Retired Officers of the Navy and Marine Corps.

May 8, 1912, ordered to be Printed.

Mr. Lodge, from the Committee on Naval Affairs, submitted the following

REPORT.

(To Accompany S. 5955.)

The Committee on Naval Affairs to whom was referred the bill (S. 5955) for the relief of certain retired officers of the Navy and Marine Corps, having considered the same, report thereon with a recommendation that it pass.

The bill has the approval of the Navy Department, as will appear by the following communication to the chairman of the Committee on Naval Affairs, House of Representatives:

"Retired Officers Performing Active Duty.

"DEPARTMENT OF THE NAVY,
"WASHINGTON, *January* 18, 1912.

"MY DEAR CONGRESSMAN: I have the honor to acknowledge the receipt of your letter transmitting a bill (H. R. 1619) for the relief of certain retired officers of the Navy and Marine Corps, and requesting the views and recommendations of the Department thereon.

"The object of the bill is to give credit for active duty performed after retirement to all those officers so employed who were 'retired for disability incident to the service.' It is believed, however, that the bill should be amended by striking out the words 'for disability incident to the service,' on page 1, lines 3 and 4, and inserting in lieu thereof 'in accordance with

law,' thus including within its terms not merely a single class of retired officers who have done active duty, but all such officers who have, since retirement, performed active duty. The bill in this form would apply to all classes generally rather than to a single class specially.

"With the amendment suggested, it is recommended that the bill be given favorable consideration by the committee.

"Faithfully yours,

"G. v. L. MEYER.

"THE CHAIRMAN, COMMITTEE ON NAVAL AFFAIRS,
"House of Representatives.

The bills indicate that the novel, temporary policy of the act of June 7, 1900, which permitted compulsory assignment of retired officers to active service in time of peace, with stationary pay and allowances as of the grade from which they were retired, had come to wear, in the light of its exercise, an aspect of inequality and harshness.

The act of August 22, 1912, effected an almost complete reversal of the policy, but it did nothing in the way of alleviating the past effects of the policy condemned. The appellant submits, in view of all the conditions and circumstances, that it is not safe to conclude, as an exclusive deduction, that in enacting the law of March 4, 1913, the legislative mind was focused upon the correction of but one mischief that had occurred in the pay system of the navy.

Surely it is safe to conclude that, as the language of the act of March 4, 1913, is broad enough to connect it with the mischief recognized, in part, by the act of August 22, 1912, it is *in pari materia* with the policy of that act, and in that light that it does no more than retroactively extend the policy so as to cover the clearly observed discrimination that resulted to compulsory-service men from application of the condemned policy.

Referring again to a point touched upon in appellant's main brief to the case of the United States *vs.* Frederick W.

Hvoslef and others (237 U. S., p. 1) and that of the Thames-Mersey Marine Insurance Co., Ltd., *vs.* The United States (237 U. S., p. 19), the Government in its brief recited in detail the report of the House committee on the proposed original legislation providing for the refunding of certain revenue taxes illegally collected, which afterwards became the act of July 27, 1912 (37 Stat. L., 240), and urged that Congress intended to limit the act of 1912 to the refunding of death duties erroneously or illegally assessed under section 29 of the war revenue act, and reference was made to the legislative history of the statute.

Justice Hughes, in delivering the opinion of the court, decided that:

> "Although the pendency of one class of claims may have induced the passage of an act of Congress providing for their adjustment, the act may embrace other claims if its terms are sufficiently wide so to do * * *."

If the appellant can be brought within the plain terms of the statute he should be given judgment for the amount to which he claims he is legally and justly entitled.

The act of March 4, 1913, gives him a complete right and title to the pay and allowances of a Commander while in active service, for the act directs "that all officers of the Navy, who since the third day of March, 1899, have been advanced, or may hereafter be advanced in grade or rank, pursuant to law, shall be allowed the pay and allowances of the next higher grade or rank from the dates stated in their commissions."

The appellant's record in every detail follows the requirements of said statute.

Respectfully submitted,

EDWARD S. McCALMONT,
SIMON LYON,
R. B. H. LYON,
Attorneys for Appellant.

TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1914

No. [redacted] 154

JOHN D. FORD, APPELLANT,

vs.

THE UNITED STATES.

APPEAL FROM THE COURT OF CLAIMS.

FILED MAY 19, 1914.

(24,223)

(24,223)

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1914.

No. 486.

JOHN D. FORD, APPELLANT,

vs.

THE UNITED STATES.

APPEAL FROM THE COURT OF CLAIMS.

INDEX.

JUDD & DETWEILER (INC.), PRINTERS, WASHINGTON, D. C., AUGUST 13, 1914.

1 I. *Petition and Amended Petition.*

No. 32687.

JOHN D. FORD
vs.
THE UNITED STATES.

On November 1, 1913 the claimant filed his original petition.

Subsequently, to wit, on December 16, 1913, the claimant, by leave of Court, in lieu of said original petition, filed his amended petition, which is as follows:

Amended Petition.

To the Honorable the Court of Claims:

The amended petition of John D. Ford respectfully represents:

1. He is a citizen of the United States and a resident of Baltimore, Md., and is an officer of the United States Navy, holding the rank of Rear Admiral, Retired.

2. On May 19, 1902, while holding the rank of Captain on the active list of the United States Navy, he was retired under the provisions of Section 1444 Revised Statutes, and was advanced in grade pursuant to the provisions of the Act of March 3, 1899, Section 11 (30 S. L. 1006), and became a Rear Admiral. In accordance with the Act of March 4, 1911 (36 S. L. 1354) he was given a commission as a Rear Admiral on the retired list to rank from May 19, 1902.

3. From May 19, 1902, to December 25, 1907, he was on active duty in the city of Baltimore, Md., and in other places as inspector of machinery and ordinance, under orders of the Secretary of the Navy, under the provisions of the Act of June 7, 1900 (31 S. L. 703); and during said period he received the pay and allowances of a Captain, the grade from which he was retired.

2 4. On March 3, 1913, the following law was enacted:

"That all officers of the Navy who, since the third day of March, eighteen hundred and ninety-nine, have been advanced or may hereafter be advanced in grade or rank pursuant to law shall be allowed the pay and allowances of the higher grade or rank from the dates stated in their commissions." (37 S. L. 891.)

Said law provided for the allowance to this claimant of the pay and allowances of a Rear Admiral from the date stated in his commission, May 19, 1902, and he became and is now entitled to the difference between the pay and allowances of a Captain and a Rear Admiral on the active list for the period from May 19, 1902, to December 25, 1907, during which time he was on active duty and received the pay of Captain as aforesaid.

5. Claim for said difference was presented to the Auditor for the Navy Department and was disallowed by that officer.

6. To the best of claimant's knowledge and belief the difference between the pay and allowances given claimant and those to which he was entitled is $5,500.

7. Claimant is the sole owner of this claim and has made no assignment thereof, he is justly entitled to the amount claimed after allowing all just credits and set-offs, he has at all times borne true allegiance to the Government of the United States, and has not in any way voluntarily aided, abetted or given encouragement to rebellion against the said Government, and he believes the facts stated to be true.

And the claimant prays judgment for $5,500.

F. A. FENNING,
Attorney for Claimant.

I, F. A. Fenning, do solemnly swear that I am the attorney in this case, that I have read the foregoing petition, and that I believe the facts therein stated to be true.

F. A. FENNING.

DISTRICT OF COLUMBIA, *ss:*

Subscribed and sworn to before me this 16th day of December, 1913.

[SEAL.] ERSKINE GORDON,
Notary Public, D. C.

LLOYD ODEND'HAL,
SPENCER GORDON,
Of Counsel.

3 II. *Traverse. Filed December* 17, 1913.

In the Court of Claims of the United States, December Term, A. D. 1913-1914.

No. 32687.

JOHN D. FORD
vs.
THE UNITED STATES.

And now comes the Attorney General, on behalf of the United States, and answering the petition of the claimant herein, denies each and every allegation therein contained; and asks judgment that the petition be dismissed.

HUSTON THOMPSON,
Assistant Attorney General.
J. R. W.

4 III. *Defendant's Demurrer. Filed February* 4, 1914.

The defendants, by their Attorney General, demur to the amended petition in the above-entitled cause on the ground that it does not state facts sufficient to constitute a cause of action.

HUSTON THOMPSON,
Assistant Attorney General.

LOUIS G. BISSELL,
Attorney for the United States.

5 IV. *Argument and Submission of Demurrer.*

On April 27, 1913 the demurrer in this case came on to be heard. Mr. Louis G. Bissell was heard in support of the demurrer; Mr. Spencer Gordon was heard in opposition thereto and the demurrer was submitted.

6 V. *Judgment of the Court Sustaining the Demurrer and Dismissing the Petition.*

At a Court of Claims held in the City of Washington on the 4th day of May 1914, judgment was ordered to be entered as follows:

The Court on due consideration of the premises find for the defendants and do order, adjudge and decree, that the demurrer of the defendants be sustained, and that the petition of the claimant, John D. Ford, be, and the same is hereby dismissed.

BY THE COURT.

7 VI. *Application for and Allowance of Appeal to the Supreme Court.*

Now comes the claimant in the above entitled cause by Frederick A. Fenning, his attorney of record, and shows that the amount in controversy exceeds three thousand dollars, said amount being five thousand five hundred dollars.

And the claimant prays that this Court allow an appeal to the Supreme Court of the United States from the judgment rendered herein May 4, 1914, sustaining a demurrer and dismissing the suit.

FREDERICK A. FENNING,
Attorney of Record.

Filed May 12, 1914.

Ordered: That the above appeal be allowed as prayed for.
May 12, 1914.

BY THE COURT.

8 Court of Claims.

No. 32687.

JOHN D. FORD
vs.
THE UNITED STATES.

I, John Randolph, Assistant Clerk of the Court of Claims, certify that the foregoing are true transcripts of the pleadings in the above-entitled cause; of the judgment of the Court sustaining the demurrer of the defendants and dismissing the petition of the claimant; of the application of the claimant for, and the allowance of, an appeal to the Supreme Court of the United States.

In testimony whereof I have hereunto set my hand and affixed the seal of said Court of Claims, at Washington City, this 15" day of May, A. D. 1914.

[Seal Court of Claims.]

JOHN RANDOLPH,
Assistant Clerk Court of Claims.

Endorsed on cover: File No. 24,223. Court of Claims. Term No. 486. John D. Ford, appellant, vs. The United States. Filed May 19, 1914. File No. 24,223.

In the Supreme Court of the United States.

OCTOBER TERM, 1915.

JOHN D. FORD, APPELLANT,
v.
THE UNITED STATES.
No. 154.

APPEAL FROM THE COURT OF CLAIMS.

BRIEF FOR THE UNITED STATES.

This is an appeal from a judgment of the Court of Claims sustaining the Government's demurrer and dismissing the petition. It is one of the class of cases similar in all respects to the case of *William W. White* v. *The United States*, No. 153, of the present term. As the legal questions raised are identical with those in the *White case*, the Government deems it unnecessary to present them in an additional brief and adopts in this case its brief in No. 153.

The facts herein are set forth in appellant's brief, pages 1 and 2.

It is respectfully submitted that the judgment of the lower court should be sustained.

HUSTON THOMPSON,
Assistant Attorney General.

20385—15

○

7

IN THE

Supreme Court of the United States

OCTOBER TERM, 1915.

No. 154.
No. 24,223.

JOHN D. FORD, APPELLANT,

vs.

THE UNITED STATES, APPELLEE.

APPEAL FROM THE COURT OF CLAIMS.

BRIEF FOR THE APPELLANT JOHN D. FORD.

FREDERICK A. FENNING,
LLOYD ODEND'HAL,
SPENCER GORDON,
Attorneys for Appellant.

THE LAW REPORTER PRINTING COMPANY, WASHINGTON, D. C.

INDEX.

Cases Cited.

Statutes Cited.

IN THE

Supreme Court of the United States

OCTOBER TERM, 1915.

No. 154.
No. 24,223.

JOHN D. FORD, APPELLANT,

vs.

THE UNITED STATES, APPELLEE.

APPEAL FROM THE COURT OF CLAIMS.

BRIEF FOR THE APPELLANT JOHN D. FORD.

STATEMENT OF THE CASE.

This is an appeal from a judgment of the Court of Claims rendered May 4, 1914, sustaining a demurrer and dismissing the petition of the claimant, John D. Ford. The allegations contained in the appellant's petition to the Court of Claims are substantially as follows:

The appellant, John D. Ford, is a rear-admiral on the retired list of the United States Navy. On May 19, 1902, while a captain on the active list he was retired and advanced to his present grade of rear-admiral. At that time the act of June 7, 1900 (31 Stat. L., 703), was in force, which provided:

> "During a period of twelve years from the passage of this act any naval officer on the retired list

> may, in the discretion of the Secretary of the Navy, be ordered to such duty as he may be able to perform at sea or on shore, and while so employed shall receive the pay and allowances of an officer of the active list of the grade from which he was retired."

Pursuant to this act he was ordered to perform active duty by the Secretary of the Navy, and performed active duty as inspector of machinery and ordnance at Baltimore, Maryland, and other places, from May 19, 1902, to December 25, 1907; and during this period of active service he was paid the pay and allowances of a captain on the active list, that being the grade from which he was retired. Under the above act of 1900 the fact that he actually held the rank of rear-admiral, retired, did not in any way affect his rate of pay.

When the appellant was advanced to the grade of rear-admiral he did not actually receive a commission, for it was held at that time that they should only be given to officers on the active list. This was cured by the act of March 4, 1911 (36 Stat. L., 1354), under the provisions of which he was given a commission as tangible evidence of his grade as a rear-admiral on the retired list, to rank from May 19, 1902, the date of his advancement.

On March 4, 1913, the following law was enacted:

> "That all officers of the Navy who, since the third day of March, eighteen hundred and ninety-nine, have been advanced or may hereafter be advanced in grade or rank pursuant to law shall be allowed the pay and allowances of the higher grade or rank from the dates stated in their commissions" (37 Stat. L., 891).

The appellant contends that this act provided for the allowance to him of the pay and allowances of a rear-admiral, the grade to which he was advanced, from the date stated in his commission, May 19, 1902, and that

under said act he became and is now entitled to the difference between the pay and allowances of a captain, which he actually received, and those of a rear-admiral on the active list, for the period of his active duty, from May 19, 1902, to December 25, 1907, amounting to $5,500 to the best of appellant's knowledge and belief.

A demurrer was sustained and the petition dismissed by the Court of Claims. No opinion was filed.

Specification of Errors.

The appellant hereby assigns the following error in the proceedings and judgment of the Court of Claims:

1. The said court erred in finding for the appellee, in sustaining the demurrer, and in dismissing the petition of the appellant.

2. The said court erred in not finding that the appellant had a valid claim under the act of March 4, 1913 (37 Stat. L., 891), for the difference between the active pay and allowances of a rear-admiral and those of a captain in the United States Navy for the period from May 19, 1902, to December 25, 1907.

ARGUMENT.

INTRODUCTION.

This claim is founded on the act of March 4, 1913 (37 Stat. L., 891), which is as follows:

> "That all officers of the Navy who, since the third day of March, eighteen hundred and ninety-nine, have been advanced or may hereafter be advanced in grade or rank pursuant to law shall be allowed the pay and allowances of the higher grade or rank from the dates stated in their commissions."

The appellant is an officer of the Navy. He has been advanced in grade since March 3, 1899. He has not been allowed the pay and allowances of the higher grade from the date stated in his commission. He therefore claims such pay and allowances (those of rear-admiral), less the pay and allowances of his former lower grade, which he has actually received (those of captain).

We shall discuss the case under the following heads:

A. Affirmative Statement.

(1) The act of March 4, 1913, should be interpreted according to the usual meaning of its words.

(2) By the usual meaning of its words the appellant, John D. Ford, comes within its provisions and has a valid claim against the United States.

B. Reply to Points Raised by Appellee.

(1) The court should not go beyond the words of the statute to look for a more limited construction.

(2) The appellant's claim does not involve a repeal of the act of June 7, 1900 (31 Stat. L., 703).

(3) The act of August 22, 1912 (37 Stat. L., 328, 329), is not in point.

(4) The act of March 4, 1913, under which appellant claims, allows him active pay.

AFFIRMATIVE STATEMENT.

A. (1) The act of March 4, 1913 (37 Stat. L., 891), should be interpreted according to the usual meaning of its words.

The cardinal rule for interpretation of a statute is that it is to be construed to give the language its ordinary meaning and effect; and to ask the court to do otherwise is to ask it to asume legislative authority. Whether the statute is well advised is not the question. It is the plain

duty of the court to give it force and effect according to its natural meaning as drawn, without limitations or exceptions. In declining to go beyond the terms of statutes, this court has spoken as follows:

> "The popular or received import of words furnishes the general rule for the interpretation of public laws as well as of private and social transactions; and whenever the legislature adopts such language in order to define and promulge their action or their will, the just conclusion from such a course must be, that they not only themselves comprehended the meaning of the language they have selected, but have chosen it with reference to the known apprehension of those to whom the legislative language is addressed, and for whom it is designed to constitute a rule of conduct, namely, the community at large."
>
> Maillard *vs.* Lawrence, 16 Howard, 255, 261.

> "If the exemption had been intended it would doubtless have been expressed. There being no ambiguity, there is no room for construction. It would be out of place. The section must be held to mean what the language imports. When a statute is clear and imperative, reasoning *ab inconvenienti* is of no avail. It is the duty of courts to execute it. Further discussion of the subject is unnecessary. With them it would be like trying to prove a self-evident truth. The effort may confuse and obscure but can not enlighten. It never strengthens the pre-existing conviction."
>
> The Cherokee Tobacco, 11 Wallace, 616, 620.

> "Our duty is to read the statute according to the natural and obvious import of the language, without resorting to subtle and forced construction for the purpose of either limiting or extending its operations. Waller *vs.* Harris, 2 Wend. (N. Y.), 561; Pott *vs.* Arthur, 104 U. S., 735. When the language is plain, we have no right to insert words and phrases, so as to incorporate in the statute a new and distinct provision."
>
> United States *vs.* Temple, 105 U. S., 97, 99.

In the case of Knox County *vs.* Morton, 68 Fed., 787, 789; 15 C. C. A., 671, 673, construing a Missouri statute of limitation, the court said:

> "Attempted judicial construction of the unequivocal language of a statute serves only to create doubt and to confuse the judgment. Where the meaning of statutes is plain and clear on their face, arguments drawn from the history of the legislation and the possible motives or purposes of the legislation are entitled to very little consideration. They often serve rather to obscure than to elucidate the meaning of the laws, and where the signification of the language is certain the legislature must ordinarily be presumed to have meant what they have expressed."

And in Union Central Life Insurance Company *vs.* Champlin, 116 Fed., 858, 860; 54 C. C. A., 208, 210, the court said:

> "While ambiguous and doubtful expressions in legislative acts may and should be so interpreted by the courts as to carry out the intention of the body which enacted them when they fairly disclose that intention, yet it is the purpose which the act itself discloses, and that only, which may be thus enforced. The courts may not import into a plain and unambiguous law and give effect to a supposed intention or purpose of the legislative body which is neither expressed nor indicated in the act. Such a course of action would pass beyond the limits of construction or interpretation into the forbidden domain of judicial legislation."

A. (2) By the usual meaning of the words of the act of March 4, 1913 (37 Stat. L., 891), the appellant, John D. Ford, comes within its provisions and has a valid claim against the United States.

From May 19, 1902, to December 25, 1907, the appellant received the pay and allowances of a captain,

while on active duty and holding the rank of rear-admiral, retired. He contends that under the act of 1913, he became entitled to the pay and allowances of a rear-admiral for that period, and his suit is for the difference between the pay and allowances of a rear-admiral, which he has never received, and the pay and allowances of a captain, which have actually been paid him. Nothing can be more clear than that the appellant's case comes exactly within the terms of the act of 1913, which we shall consider phrase by phrase.

"*That all officers of the Navy.*" Retired officers are not excepted, and a retired officer is certainly an officer of the Navy, as was held in Franklin *vs.* U. S., 29 C. Cls., 6. See also Tyler *vs.* U. S., 16 C. Cls., 223, 105 U. S., 224; and Fowler *vs.* U. S., 31 C. Cls., 35, for analogous cases of officers of the Army. The appellant is a retired officer of the Navy.

"*Who have been advanced or may hereafter be advanced in grade or rank pursuant to law.*" "A grade is a step in a series, a rank" (Schuetze *vs.* U. S., 24 C. Cls., 229), such as from commander to captain to admiral. It has nothing to do with the question of active or retired service. The advancement in the case at bar was from captain to rear-admiral. The act of 1913 is by its express terms retroactive. This is not a case where an act is passed merely changing a rate of pay and a claim is made that it should relate back to a date prior to its passage. By the very terms of the act it applies to "*all officers . . . who . . . have been advanced,*" as well as to those who "*may hereafter be advanced.*" On May 19, 1902, the appellant was advanced in grade from captain to rear-admiral pursuant to law (the act of March 3, 1899, Sec. 11, 30 Stat. L., 1006).

"*Since the third day of March, 1899.*" It will be noted that March 3, 1899, was the date of the act known as the Navy Personnel Act, and it is by the provisions of Sec-

tions 8, 9 and 11 of this statute that officers were first advanced in grade at or after retirement; and to the best of counsel's knowledge there are no officers of the Navy with a retired grade higher than their last active grade who did not attain such higher grade since March 3, 1899. Thus the few officers who were promoted at or after retirement and who subsequently performed active service between 1900 and 1912 are enabled to come under the act of 1913, while the door is closed to possible claims arising from promotion from the beginning of the Navy to March 3, 1899, ancient claims which might be found perfectly legal had not this date of limitation been inserted. However, the appellant's advancement was on May 19, 1902, and he comes well within the limit. He has been advanced since the third day of March, 1899.

"*Shall be allowed the pay and allowances of the higher grade or rank.*" The higher grade to which the appellant was advanced was the grade of rear-admiral and the pay and allowances of that grade are the pay and allowances of a rear-admiral, as distinguished from the pay and allowances of the lower grade of captain, which the appellant actually received during the period in question.

"*From the dates stated in their commissions.*" This marks the time from which the advanced pay dates. Rear-Admiral Ford did not receive a new commission at the time of his advancement, but he later received one to date from May 19, 1902, and he was actually commissioned when the act of 1913 was passed. The date was May 19, 1902.

Thus the appellant comes exactly within the terms of the act of 1913, and he only wishes it to be interpreted according to the usual meaning of its terms as words of the English language. He contends that no exceptions should be read into it, and that no intention should be implied which can not be found in its wording. He seeks to have the statute enforced, and opposes any part of it being annulled.

(B) REPLY TO POINTS RAISED BY APPELLEE.

The Court of Claims gave no opinion with its judgment, and the appellant is at the disadvantage of not knowing which of the points raised by counsel for the United States influenced the court in its decision. We shall, therefore, consider them all briefly as argued in the court below.

B. (1) The court should not go beyond the words of the act of March 4, 1913 (37 Stat. L., 891), to look for a more limited construction.

It was urged by counsel for the United States that the true purpose of the act of 1913 was merely to relieve certain classes of officers, by giving them increased pay from earlier dates, and in the court below counsel called attention to a decision of the Comptroller of the Treasury, which purported to give a documentary history of the act to show that the intention was to provide only for ensigns and certain other grades. If this is so the law should have been more specific. When it appears on the statute books beginning with the words "All officers," we must assume that all officers were intended, not some officers to be ascertained by the Treasury Department. But assuming as a basis for the argument that when the act was passed it was expected that it would have the limited scope that the appellee contends, still if no such limited scope is found in its words and if in its literal meaning it is constitutional and reasonable the court can not go beyond the words of the statute to inquire whether Congress meant what it said.

We know of but two exceptions to the general rule that the court will not go outside the plain meaning of a statute to find material for restricting its scope and application, the first being when a statute is attacked as unconstitutional, and the second, where the application

of the statute, according to its strict terms, would operate in a way so manifestly unjust or grossly unreliable, and so opposed to our common conception of justice, as to provoke instant opposition. The reason for the exceptions is that the presumption is that the legislature has not passed an act it is forbidden to pass by the organic law, or that it has not intended a result concerning the unreasonableness or injustice of which there can be no dispute. In the case at bar there is no contention that the act of 1913 is unconstitutional, and we think it plain that there is nothing unjust or unreasonable in our construction of the act, which will allow the courts to go outside of the law's language to find its meaning.

Counsel for the United States asserted in the court below that the appellant Ford actually received $40 a year more in pay and allowances for his actual services, than he would have received in pay alone if he had been permitted to remain passive, and the contention is that because of this fact the claim is so unreasonable that a literal interpretation of the statute of 1913 could not have been intended. But the defendant does not take into consideration the fact that the five years during which Admiral Ford was continued in service after his retirement were taken from that period of his life when he was entitled, in fairness, and would have obtained but for the transient policy of the act of 1900, complete independence and immunity from enforced service. It also forgets that during those five years, he stood still so far as advancement was concerned, and that at the expiration of the service he was no better off on the retired list than if he had performed no active duty since the date of his retirement. In other words he received no advancement or longevity credit for his five years extraordinary service. And the defendant further overlooked the fact that, having reached retirement after the ordinary lifetime of service, the appellant was en-

titled, in fairness, to decide for himself whether he would wish to continue to engage actively in service, and that if he should so decide he was fairly entitled to choose the character of the service, and that it is unreasonable to suppose that he could not have commanded a greater remuneration for his services, than $40 a year, or that he would have given his services for that compensation. Admiral Ford may be looked upon as having been unfortunate to say the least, and surely the situation is of a character to preclude the conclusion that his claim is either unjust or unreasonable, or of a nature to warrant the court, in restricting, by implication, the meaning of a statute which by its terms clearly gives proper payment for his services.

B. (2) The appellant's claim does not involve a repeal of the act of June 7, 1900 (31 Stat. L., 703).

It was argued by counsel for the United States in the court below that the act of 1913 did not repeal the act of 1900, under which appellant's service was performed, and the case of Sears *vs.* U. S., 46 C. Cls., 105, was cited to show that there could be no such repeal. This is beside the point, however, for the appellant has never claimed that the act of 1900 was repealed.

In the Sears case, the claimant, a retired naval officer, had been assigned to active duty under the act of June 7, 1900. By the act of May 13, 1908 (35 Stat. L., 127), it was provided that:

> "The pay of all commissioned, warrant and appointed officers and enlisted men of the Navy now on the retired list shall be based on the pay, as herein provided for, of commissioned, warrant and appointed officers and enlisted men of corresponding rank and service on the active list."

It was contended that this act repealed the act of 1900 by implication, and that the claimant was entitled to active pay for active service performed after the date of

the act of 1908. The court dismissed the petition, stating the well-settled rule that repeals by implication are not favored, and that a later act of Congress, which is general in its terms and not expressly repealing a prior special act, will not affect the special provisions of the earlier act.

The case at bar is easily distinguishable from the Sears case, for in the case at bar the appellant seeks nothing by implication and does not claim that there has been any repeal of the act of 1900 by the act of 1913. The act of 1900 was limited by its own terms to twelve years, and had already expired before the act of 1913 was passed. Nor do we contend that the appellant was erroneously paid, for he was paid the active pay of the grade from which he was retired and this payment was exactly in accordance with the then existing act of 1900. But what we do believe is that the act of 1913, by its terms expressly retroactive, gave relief to officers who had not received the pay and allowances which they should justly have received, that under the act of 1900 a situation had existed for twelve years, which wronged the officers, in that an officer could be ordered to perform active luty in a certain grade, and would be paid therefor active pay, but not that of his grade at the time such active duty was performed, but that of a grade held by him formerly, before his retirement.

On March 3, 1913, this situation existed: Rear-Admiral Ford, an officer of the Navy, had since the third day of March, 1899 (viz., on May 19, 1902), been advanced in grade from captain to rear-admiral. From December 25, 1907, to date, he had been paid as rear-admiral, but from May 19, 1902, to December 25, 1907, he had been on active duty and had received active pay and allowances, but not those of the higher grade of rear-admiral, but of the lower grade of captain. On March 4, 1913, an act was passed which covered his

case exactly and provided that he should be allowed the pay and allowances of the higher grade, that of rear-admiral.

The claimant does not contend that the act of 1913 repealed the act of 1900 in any way, for the act of 1900 had already expired in 1912. The act of 1913 took an existing situation and provided that additional allowances should be made to certain officers, among them the claimant. There is no question of implication, and no question of repeal.

B. (3) The act of August 22, 1912 (37 Stat. L., 328, 329), is not in point.

The act of August 22, 1912 (37 Stat. L., 328, 329), is as follows:

> "Hereafter any naval officer on the retired list may, with his consent, in the discretion of the Secretary of the Navy, be ordered to such duty as he may be able to perform at sea or on shore, and while so employed in time of peace shall receive the pay and allowances of an officer of the active list of the same rank; *provided*, that no such retired officer so employed on active duty shall receive, in time of peace, any greater pay and allowances than the pay and allowances which are now or may hereafter be provided by law for a lieutenant, senior grade, on the active list of like length of service; *and provided further*, that any such officer whose retired pay exceeds the highest pay and allowances of the grade of lieutenant, senior grade, shall, while so employed in time of peace, receive his retired pay only, in lieu of all other pay and allowances."

It was urged by counsel for the United States that the act of 1900, under which the appellant performed his active service, was succeeded by this act of 1912, and that if the argument of the appellant were carried to its logical conclusion this act of 1912 would be repealed by implication by the act of 1913; that the existing act of 1912

could not have been repealed by implication by the act of 1913, and that therefore appellant's conclusion as to the effect of the act of 1913 on officers who had performed active duty under the act of 1900 is erroneous. But it will be seen that the act of 1912 has nothing to do with the case at bar, and in no way involves the claim of Rear-Admiral Ford.

It will be noted that the act of June 7, 1900, had expired of its own twelve-year limitation before this act of 1912 was passed and that appellant's active service, for which claim is made, was concluded December 25, 1907, before the passage of the act of 1912, which by its express terms ("*hereafter*") applies to subsequent service, so that the claim of the appellant does not rely upon the act of 1912 in any way. Moreover, this act of 1912 is essentially different from the act of 1900, in that service under the act of 1912 is voluntary "*with his consent*," instead of involuntary "*in the discretion of the Secretary of the Navy.*" The act of 1912 can only be said chronologically to be the successor of the act of 1900.

But whether or not the act of 1912 is the successor of the act of 1900, the appellant needs make no claim that the act of 1912 was repealed by the act of 1913. No retired officer on active duty under the act of 1912, coming within the language of the act of 1913 (assuming such a position possible, which we do not concede), can claim under the act of 1913, for the obvious reason that the act of 1913 does not repeal the act of 1912, and officers of the retired list on active duty under the act of 1912 are therefore not within the scope of the act of 1913. The appellant does not have to claim that the act of 1912 was repealed, and he does not claim that the act of 1912 was repealed. Nor was the act of 1900 repealed. The mistake of the defendant is in assuming that the act of 1900 was in existence when the act of 1913 was passed. When the act of 1913 was passed there was no act of

1900 then in effect to repeal. We insist that the act of 1913 confirmed every act done under the act of 1900, but, confronting conditions, the act of 1913 provided for the payment of additional compensation to that which had been paid under the act of 1900. This involves the repeal of neither act.

B. (4) The act of March 4, 1913, under which appellant claims, allows him active pay.

It was urged that the act of 1913 does not expressly provide that retired officers who have performed active duty and have received the active pay of the lower grade shall now be paid the *active* pay of the higher grade. This is true, but the acts of 1900 and 1913 together do so provide.

It is obvious that the act of 1913 says nothing about active or retired pay. The act does not attempt to recodify the Navy pay laws. It makes no change in the rates of regular pay, longevity pay, allowances, or the question of active or retired pay. It simply and clearly provides that certain officers promoted after March 3, 1899, shall be allowed the pay of the higher as distinguished from the lower grade.

Suppose the act of 1913 stood alone on the statute books. There would be no way to determine in dollars and cents what pay and allowances the officers were to get. We must turn to other statutes covering these subjects. We find that officers on the active list receive active pay, that most officers on the retired list receive retired pay, but that from 1900 to 1912 retired officers ordered to active duty received, not retired, but active pay. There is nothing in the act of 1913 to change this. The act of 1913 simply fixes the *grade* in accordance with which they shall be allowed *the pay and allowances to which they are otherwise entitled*, which, in the case of the appellant, is not retired pay but active pay under the

act of 1900. The act of 1900 provided that the appellant was to receive active pay and he did actually receive active pay thereunder. He was and is entitled to active pay.

There is nothing strained in thus construing together the acts of 1913 and 1900, for as a matter of fact, several other acts must be taken into consideration. The actual pay and allowances to be received by any officer, figured in dollars and cents, depends upon numerous laws, to which we must turn to find the actual pay of each grade, longevity pay, and allowances for a great variety of service. The act of 1910 only fixes the character of pay, whether active or retired, and for other determining elements we must look elsewhere. This can be done by the Treasury Department. Under the act of 1913 we are only concerned with the question of grade. The higher grade to which the appellant was advanced was the grade of rear-admiral, and the pay and allowances of that grade are the pay and allowances of a rear-admiral.

CONCLUSION.

Reviewing briefly it will be seen that the act of 1913 should be construed according to its terms with no unexpressed exceptions or implications, and that by the terms of the act of 1913 the appellant, an officer of the Navy, who, since March 3, 1899, has been advanced in grade pursuant to law, should be allowed the pay and allowances of the higher grade (rear-admiral), from the date stated in his commission, May 19, 1902, and having received the pay and allowances of the lower grade (captain) from May 19, 1902, to December 25, 1907, he has a valid claim against the United States for the difference in pay and allowances for that period.

The question presented to the court is simply this: Is Admiral Ford entitled to the difference between the pay of captain and rear-admiral for the time specified and

claimed? In determining this question there is but one method to pursue. That is the plain reading of language of the statute bearing on the case. The plain interpretation of that language, and not what the Government may wish to read into it, should prevail.

The act of March 4, 1913, reads:

> "That all officers of the Navy who, since the third day of March, eighteen hundred and ninety-nine, have been advanced or may hereafter be advanced in grade or rank pursuant to law shall be allowed the pay and allowances of the higher grade or rank from the dates stated in their commissions."

By inspection of Rear-Admiral Ford's commission it appears that he was made rear-admiral, to date from May 19, 1902. From that date, therefore, under the plain language of the act he was and is entitled to receive the pay of that rank, namely, that of rear-admiral. There is no ambiguity in the act and there is no reason for the court to seek to find such. If any presumption is to be drawn, it is that Congress intended to reward this officer for the work he had done.

The appellant therefore prays that the judgment of the Court of Claims, sustaining the demurrer and dismissing the petition, be reversed, and the case remanded with instructions to enter judgment for the appellant after ascertainment by the Treasury Department of the exact amount due.

Respectfully submitted.

FREDERICK A. FENNING,
LLOYD ODEND'HAL,
SPENCER GORDON,
Attorneys for Appellant.

WHITE *v.* UNITED STATES.

FORD *v.* UNITED STATES.

APPEALS FROM THE COURT OF CLAIMS.

Nos. 153, 154. Argued January 7, 1915.—Decided January 17, 1916.

The act of March 4, 1913, c. 148, 37 Stat. 891, granting officers of the Navy, who had been advanced in rank, the pay and allowances of the higher rank, applies only to officers on the active list and does not apply to officers on the retired list who were assigned for active service after their retirement.

In construing a statute the court will regard it as more rational to assume that Congress was dealing with present affairs than that it was reopening finished transactions.

The general rule of statutes relating to duty and pay of naval officers is found in Rev. Stat., § 1462, providing that no officer on the retired list shall be employed in active duty except in time of war.

49 Ct. Cl. 702, affirmed.

THE facts, which involve the construction of various statutes of the United States relating to pay of retired naval officers while on active service, are stated in the opinion.

Mr. Frederick A. Fenning, with whom *Mr. Lloyd*

Odend'hal and *Mr. Spencer Gordon* were on the brief, for appellant in No. 154:

The act of March 4, 1913, 37 Stat. 891, should be interpreted according to the usual meaning of its words.

By the usual meaning of its words the appellant comes within its provisions and has a valid claim against the United States.

The court should not go beyond the words of the act of March 4, 1913, 37 Stat. 891, to look for a more limited construction.

Appellant's claim does not involve a repeal of the act of June 7, 1900, 31 Stat. 703, and the act of August 22, 1912, 37 Stat. 328, 329, is not in point. The act of March 4, 1913, 37 Stat. 891, allows appellant active pay.

In support of these contentions see *Maillard* v. *Lawrence*, 16 How. 255, 261; *The Cherokee Tobacco*, 11 Wall. 616, 620; *United States* v. *Temple*, 105 U. S. 97, 99; *Tyler* v. *United States*, 105 U. S. 224; *Knox County* v. *Morton*, 68 Fed. Rep. 787, 789; *Union Life Ins. Co.* v. *Champlin*, 116 Fed. Rep. 858, 860; *Tyler* v. *United States*, 16 Ct. Cls. 223; *Schuetze* v. *United States*, 24 Ct. Cls. 229; *Franklin* v. *United States*, 29 Ct. Cls. 6; *Fowler* v. *United States*, 31 Ct. Cls. 35; *Seers* v. *United States*, 46 Ct. Cls. 105.

Mr. Simon Lyon, with whom *Mr. Edward S. McCalmont* and *Mr. R. B. H. Lyon* were on the brief, for appellant in No. 153:

So long as the language used is unambiguous, a departure from the natural meaning is not justified by any consideration of its consequence, or public policy, and it is the plain duty of the court to give it force and effect. *Lake County* v. *Rollins*, 130 U. S. 662; *United States* v. *Goldenberg*, 168 U. S. 95; *Johnson* v. *So. Pac. Co.*, 196 U. S. 15.

It is fairly and justly presumable that the legislature which was unrestrained in its authority over the subject, has so shaped the law as without ambiguity or doubt, to

bring within it everything that was meant should be embraced. Cooley on Taxation (3d ed.), p. 464.

The statute must be held to mean what its language imports; when it is clear and imperative, reasoning *ab inconvenienti* is of no avail, and there is no room for construction. *Boudinet* v. *United States*, 11 Wall. 616; *Lewis* v. *United States*, 92 U. S. 621; *Lake County* v. *Rollins*, 130 U. S. 662.

Construction and interpretation have no function where the terms of the statute are plain and certain, and its meaning clear. *Colorado & N. W. R. R.* v. *United States*, 209 U. S. 544.

The statute is a remedial one and should be liberally interpreted. *Silver* v. *Ladd*, 7 Wall. 219; *Johnson* v. *So. Pacific Co.*, 196 U. S. 15; *Merchants Bank* v. *United States*, 42 Ct. Cl. 6; 1 Kent's Comm. 465.

In expounding remedial laws, the courts will extend the remedy as far as the words will admit. *Hayden's Case*, 3 Coke, 7; *Pierce* v. *Hopper*, 1 Strange, 253.

A remedial statute ought not to be construed so as to defeat in part the very purpose of its enactment. *Beley* v. *Naphtaly*, 169 U. S. 353; *Jones* v. *Guaranty Co.*, 101 U. S. 626; *Twenty Per Cent Cases*, 13 Wall. 575; *Ross* v. *Doe*, 1 Pet. 667.

Although the pendency of one class of claims may have induced the passage of an Act of Congress providing for their adjustment, the act may embrace other claims if its terms are sufficiently wide so to do. *United States* v. *Hvoslef*, 237 U. S. 1; *Thames-Mersey Ins. Co.* v. *United States*, 237 U. S. 19.

Where a law is plain and unambiguous, whether expressed in general or limited terms, there is no room left for construction, and a resort to extrinsic facts is not permitted to ascertain its meaning. *Bartlett* v. *Morris*, 9 Porter, 266; *United States* v. *Musgrove*, 160 Fed. Rep. 700; *Lake County* v. *Rollins*, 131 U. S. 671.

Holy Trinity Church v. *United States*, 143 U. S. 463; *Binns* v. *United States*, 194 U. S. 486, do not infringe this rule. See Blackstone's Introduction, § 2, p. 60.

Mr. Assistant Attorney General Huston Thompson, with whom *Mr. Richard P. Whiteley* was on the brief, for the United States.

MR. JUSTICE HOLMES delivered the opinion of the court.

These claims raise the same question. The claimant White was a Lieutenant Commander in the Navy. On June 30, 1905, he was transferred to the retired list, on his own request, with the rank of Commander, (Navy Personnel Act of March 3, 1899, c. 413, §§ 8, 9; 30 Stat. 1004, 1006,) and on April 13, 1911, was commissioned a Commander on the retired list from June 30, 1905. (Act of March 4, 1911, c. 266; 36 Stat. 1354.) He was continued in active service from June 30, 1905, until October 31, 1911. (Naval Appropriation Act of June 7, 1900, c. 859; 31 Stat. 684, 703.) The claimant Ford was a Captain, was retired on May 19, 1902, under Rev. Stats., § 1444, with the rank of Rear Admiral, (Act of March 3, 1899, c. 413, § 11; 30 Stat. 1007,) and was commissioned Rear Admiral on the retired list from May 19, 1902. (Act of March 4, 1911, c. 266; 36 Stat. 1354.) He was continued on active duty from May 19, 1902, until December 25, 1907. (Act of June 7, 1900, c. 859; 31 Stat. 703.) As provided by the last-mentioned statute, both of these officers received the pay and allowances of the rank they held before they were retired. By the Naval Appropriation Act of March 4, 1913, c. 148, 37 Stat. 891, 892, it was enacted that "all officers of the Navy who, since the third day of March, eighteen hundred and ninety-nine, have been advanced or may hereafter be advanced in grade or rank pursuant to law shall be allowed the pay and allowances of the higher

grade or rank from the dates stated in their commissions." The claims are made under this act for the difference between the pay and allowances received during active service after retirement and that of the higher grade to which the claimants respectively had been advanced. Demurrers to the petitions were sustained by the Court of Claims.

The claimants, although pressing the universal application of the statute according to the literal meaning of its words, still tacitly concede that we must go behind the letter of the law. For while the statute says that all officers who have been advanced since the date mentioned shall have the pay of the higher grade and says nothing about active service, the claims are confined to the periods of active service named, which implies a concession that the advance in grade by itself was not enough. And this concession was required by the fact that the statute grants allowances as well as pay and that allowances are an incident of active duty alone.

As it stands admitted that the statute is of more limited scope than is apparent on its face, to an untrained reader, at least, the question is whether it is to be read as applying to all advanced officers who have been on active service or only to all such officers upon the active list. We are of opinion that the latter is the true meaning and that the decision of the Court of Claims was right. The general rule of the statutes is found in Rev. Stats., § 1462. "No officer on the retired list of the Navy shall be employed on active duty except in time of war." An exception, limited to twelve years from its passage, was made by the act of June 7, 1900, allowing officers on the retired list, in the discretion of the Secretary of the Navy, to be ordered to such duty as they might be able to perform, and giving them while so employed, the pay and allowances of the grade on the active list from which they were retired. When the act of 1913, under which these claims are made,

was passed, this exception had expired—all services under it had been rendered and paid for, and with other exceptions not affecting this case the general rule was in force. It is more rational to suppose that Congress was dealing with present affairs than that it was reopening transactions that might be ten years old and that must have been finished, at the latest, nearly a year before. And this construction is confirmed when we notice that the increased pay and allowances are given from the date of the commission, that is, if the claimants are right, from the date of their retirement without regard to the time when their active duty began. In these cases it was continuous with their service before retirement. But it might have begun years afterwards and yet by the statute the date of the increase in pay and the allowances would have been the same.

The conclusion to which the statutes directly concerned would lead us, is confirmed still further by consideration of the Naval Appropriation Act of August 22, 1912, c. 335; 37 Stat. 328, 329. This act provided that thereafter, any Naval Officer on the retired list might, with his consent, in the discretion of the Secretary of the Navy, be ordered to such duties as he might be able to perform, and while so employed in time of peace should receive the pay and allowances of an officer on the active list of the same rank, provided that he was not to receive more than the pay and allowances of a lieutenant, senior grade, on the active list of like length of service, and, if his retired pay exceeded that, then he was to receive his retired pay only. The clash that there would be between the policy of this act and that of 1913 if construed as the claimants would have it construed is plain.

Finally it may be worth noticing that the reports that introduced the enactment pointed out as the evil to be remedied that under the Act of June 22, 1874, c. 392; 18 Stat. 191, the only officers who did not receive the pay of

their grade from the time they took rank as stated in their commissions, were the youngest officers, who were appointed to the lowest grade and therefore not promoted to fill a vacancy as contemplated in the act of 1874. House Rep. No. 1089. 62d Cong., 2d Sess. Senate Rep. No. 1217. 62d Cong., 3d Sess.

Judgments affirmed.

MR. JUSTICE MCREYNOLDS took no part in the consideration and decision of these cases.